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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FREDERIC BAUCHOT

Appeal 2009-002491
Application 09/995,266
Technology Center 2100

Before HOWARD B. BLANKENSHIP, CAROLYN D. THOMAS, and
JAMES R. HUGHES, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1, 2 and 7-24. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

According to Appellant, the invention relates “to a method and system, in an electronic spreadsheet, for filling a range of cells on the basis of sample values found within this same range of cells” (Spec. 1).

Claim 1 is illustrative:

1. A method for filling empty cells of a range of cells in a multi-dimensional spreadsheet comprising a plurality of cells identified by a cell address along each dimension of the spreadsheet, said method comprising the steps of:

selecting the range of cells, said range comprising a plurality of sample cells and one or a plurality of empty cells, wherein prior to said selecting each sample cell contains a sample value and an empty cell contains no value or a value not considered as a sample value; the content y_i of each sample cell and each empty cell being associated with a particular value x_i of a variable x ;

after said selecting, ordering the sample cells and the empty cells according to the values x_i associated with the content of said cells;

after said ordering, processing the empty cells comprising, for each empty cell, the steps of:

identifying the value x_i associated with the content of the empty cell;

selecting one or a plurality of previous sample cells with respect to the empty cell;

selecting one or a plurality of next sample cells with respect to the empty cell;

computing the value y_i of the empty cell according to the values y_{previous} contained in the selected one or plurality of previous sample cells, and the values y_{next} contained in the selected one or plurality of next sample cells;

filling the empty cell with said computed value y_i ; and

after said processing the empty cells, displaying the spreadsheet via a graphical user interface (GUI).

Rejection

Claims 1, 2 and 7-24 stand rejected under 35 U.S.C. § 102(a) as being anticipated by John Flaherty, *Selected Excel Basics, Excel Tips for Efficient Spreadsheet Use*, Aug. 31, 2000, http://www.bf.rmit.edu.au/quantExcel/Excel_Tips.pdf (“Flaherty”), as further evidenced by screen shots provided from Microsoft Excel, copyright 1985-1999 (“Excel Screenshots”).

FINDINGS OF FACT (FF)

Flaherty Reference

1. The figure at the top of page 5 of Flaherty discloses a dialog box entitled “Series”. To the left of the dialogue box, rows A1-A17 are shown with values ranging from 10 to 90, with cell A1 having the value 10 and cell A17 having the value 90. Each cell in between cell A1 and A17 has

a value that is five (5) more than the previous cell. (*see* figure at top of page 5).

The description, on page 4, before the dialog box reads:

Entering a Data Series

Specific start and stop values may be entered for a data series using the Series dialogue box. The following steps demonstrate how to use the Series dialogue box to create a data series in column A, the start value is 10 (entered in cell A1), the stop value is 90 and the step value is 5.

- | | |
|--------|---|
| Step 1 | Select the first cell of the series (Cell A1) and enter the starting value (10) |
| Step 2 | Select the range of cells to fill (not required for the present example) |
| Step 3 | From the Edit drop-down menu, choose Fill > and from the cascade menu select Series |
| Step 4 | Complete the Series dialogue Box as follows and click OK. This will produce the completed series shown in the right of the diagram. |

(page 4)(emphasis omitted).

Excel Screenshots

2a. Page 8 of the Excel Screenshots illustrates a dialog box, entitled Series, as an overlay on an Excel spreadsheet that has the number 10 in cell A1 (where cell A1 is not highlighted). (page 8).

2b. Page 9 of the Excel Screenshots illustrates cells, from A1 to A17, filled in with values ranging from 10 to 90, where A1 has the value 10 and each cell thereafter has a value equivalent to the value in the previous cell plus five (5) (where cells A1-A17 are not highlighted). (page 9).

PRINCIPLES OF LAW

Anticipation

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992)).

ANALYSIS

Claims 1, 2 and 7-24

Issue: Did the Examiner err in finding the prior art teaches “selecting the range of cells, said range comprising a plurality of sample cells ..., wherein prior to said selecting[,] each sample cell contains a sample value ...,” as set forth in claim 1?

Appellant argues that “claim 1 requires that a plurality of sample cells (i.e., at least two sample cells) contain a sample value in each such sample cell before the range of cells is selected” (App. Br. 9). For example, Appellant contends that the example, on pages 4-5 of Flaherty, discloses that (1) Step 1 corresponds to filling “the cell A1 with the starting value of 10”; (2) Step 2 corresponds to entering “the step value of 5 and the stop value of 90 into a dialog box ...to ‘select the range of cells to fill’”; and

(3) Step 3 corresponds to selecting the “Fill” command that “generates the filled-in cells A2, ..., A17 shown in the figure at the top of page 5 of Flaherty” (*Id.*). Appellant argues that Flaherty “teaches selecting the range of cells in Step 2 before the sample values are placed in the spreadsheet in Step 3, which is the exact opposite of what claim 1 requires” (*Id.*).

The Examiner finds that “[t]he dialog box represents the spreadsheet cells,” and is “the means by which the cells are filled” (Ans. 14). More specifically, the Examiner finds that by “[u]sing the dialog box, the cells A2-A17 can be filled with values based on previous cell value and next cell value as depicted in the Excel screenshots on pages 8-9 and also in Flaherty on page 5” (Ans. 14). Further, the Examiner finds that “the cells can certainly contain a value in the spreadsheet before the range of cells are selected from within the dialog box,” as “[t]he use of a dialog box does not prohibit sample cells being filled out prior to utilizing the dialog box” (Ans. 14-15).

While we agree with the Examiner that the dialog box may be used to fill the cells with values, we nonetheless find Flaherty fails to clearly teach the above-argued limitation. For example, Flaherty teaches (1) selecting the range of cells to fill in Step 2 and (3) choosing the Fill option to produce the completed series shown in the right of the diagram (*i.e.*, the cells from A1 to A17 filled in with values between 10 and 90) (*see* FF 1). Therefore, we find Flaherty teaches selecting the cells prior to filling the cells with a value. Thus, Flaherty fails to teach that “*prior to said selecting*, each sample cell contains a sample value,” as set forth in claim 1 (emphasis added).

With respect to the cited Excel Screenshots, the Examiner has not shown, and we do not readily find, when the screenshots' cells are selected or filled, as there is no accompanying description of any of the screenshots. Typically, when a cell on a screen is selected, it will appear on the corresponding screenshot as if the item has been highlighted. However, none of the cells on page 9 of the Excel Screenshots, for example, are highlighted. The Examiner relies upon page 9 of the Excel Screenshots to show selecting and filling cells (Ans. 14). Here, without more of a description from the cited art itself, we are unable to ascertain when the plurality of cells, shown on page 9 of the Excel Screenshots, for example, were selected and filled. Thus, the Examiner has not demonstrated that Flaherty and the Excel Screenshots disclose "*prior to said selecting*, each sample cell contains a sample value," as set forth in claim 1.

OTHER ISSUES

Firstly, in the Appeal Brief, Appellant also argued that "[t]he Examiner has offered no proof that the Flaherty reference was published before the filing date, namely 11/27/2001, of the present application" (App. Br. 5). In response, the Examiner finds that "the document properties of the 'Selected Excel Basics' [Flaherty] indicate that it was created and published on 08/31/00 and not modified after that date" (Ans. 12). We find that this is sufficient to show an earlier publication date for Flaherty.

Secondly, we note that the Examiner is attempting to use two references, both the Flaherty reference and the Excel Screenshots, to demonstrate that the prior art teaches the above-argued limitation (*see* Ans. 14-15). The difficulty we have with this is that the Examiner has rejected

Appellant's claims under §102(a) (Ans. 3). As this is an anticipation rejection, the Examiner must demonstrate that a single prior art reference discloses, either expressly or inherently, each limitation of the claim (*see Perricone* at 1375). Here, the Examiner inappropriately relies upon two references (*i.e.*, Flaherty and the Excel Screenshots), and not one. While it is permissible to bring in an additional reference to show inherency, this does not appear to be the case here.

Instead, the Examiner indicates that the Examiner "was relying on the associated screenshots of the 1999 version of Microsoft Excel to provide a date with respect to the teachings of Flaherty" (Ans. 12). Yet, when pushed further to provide a publication date, the Examiner, in the Answer, shows that Flaherty was created and published on 08/31/00 (Ans. 12), a date prior to the present application. So, we are left to ponder the question: Why are the Excel Screenshots being introduced in this §102(a) rejection? Not only has the Examiner *not* shown how the Excel Screenshots are linked to the Flaherty reference, but the Examiner has now also dispelled the "date" reason for using the Excel Screenshots. Thus, it is abundantly unclear to this Board why the Excel Screenshots are being introduced and what role they play in this §102(a) rejection.

Therefore, for all of the reasons discussed above, we find the Examiner has *not* set forth a sufficient showing of anticipation, as the argued limitations are not clearly shown in either cited reference and it is unclear why the Excel Screenshots are being linked to the Flaherty reference. Independent claims 13 and 14 are commensurate in scope with representative claim 1. Accordingly, we reverse the Examiner's rejection of

Appeal 2009-002491
Application 09/995,266

independent claims 1, 13, 14 and dependent claims 2, 7-12, and 15-24 which stand therewith.

DECISION

The Examiner's rejection of claims 1, 2, and 7-24 under 35 U.S.C. § 102(a) is reversed.

REVERSED

ke

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